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TARIFF AUTHORITY FOR MAJOR PORTS

G.No.524 **New Delhi,** **29 Octomber, 2021**

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from Jawaharlal Nehru Port Trust (JNPT) for revision of toll charges to be levied on the containers passing through Port, due to closure of Toll Gate on NH-4B, SH-54, during the years 2021-22, 2022-23 and 2023-24, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports

Case No. TAMP/28/2021- JNPT

Jawaharlal Nehru Port Trust **- - -** **Applicant**

QUORUM

(i). Shri. T.S. Balasubramanian, Member (Finance)
(ii). Shri. Sunil Kumar Singh, Member (Economic)

O R D E R

(Passed on this 11th day of October 2021)

This case relates to a proposal received from Jawaharlal Nehru Port Trust (JNPT) for revision of toll charges to be levied on the containers passing through Port, due to closure of Toll Gate on NH-4B, SH-54, during the years 2021-22, 2022-23 and 2023-24.

2.1. The JNPT vide its communication dated 27 April 2021 had made the following submissions:

(i). TAMP had approved toll charges of ₹ 267/- per TEU vide Order no. TAMP/28/2016-JNPT dated 15 September 2017 which was levied on all TEUs going in and out of all Gate complexes of the port. Further, TAMP also approved the toll collection charges of ₹ 267/- per TEU when it has approved the revised Scale of Rates of the port during general tariff revision vide SOR Gazette no. 216 dated 18 June 2020.

(ii). The toll collected by the Port at the aforesaid rate is transferred to M/s. Mumbai JNPT Port Road Company Ltd. (MJPRCL) which is used by them to service the ECB loan, lent by the port to them.

(iii). However, it has been seen that the present toll collection has been insufficient and M/s. MJPRCL has been unable to service its debt obligation since September 2020.

(iv). In view of the above, pending approval of TAMP, Port intends to levy toll charges of ₹ 450/- per TEU from 1st May 2021 to enable M/s. MJPRCL to service its debt obligations towards the port.

(v). The revised proposed toll charges will be as follows:

No.	Particulars	Toll charges in ₹
1.	Container (per TEU)	450/-
2.	Project Cargo and Liquid Cargo handled by road (per MT)	22/-
3.	Cement/ LPG (per MT)	5/-

2.2. The JNPT has conveyed that the Toll charges of ₹ 450/- per TEU to be levied from 1st May 2021, is proposed to be revised by the port with 10% increase per annum for the next two years. The toll charges on the other cargo items are proposed to be kept unchanged.

3.1. Subsequently, the JNPT vide its letter No. JNP/FIN/FA/2021-22/596 dated 25 June 2021 has filed a detailed proposal on the subject in reference. The submission of JNPT are given below:

(i). JNPT has been collecting below mentioned charges towards toll from 1st October 2017 in compliance of TAMP order No. TAMP/28/2016-JNPT dated 15th September 2017.

Description	Rate
Container	₹ 267/TEU
Projects Cargo/ Liquid Cargo by Road	₹ 22/MT
LPG/ Cement	₹ 5/MT

(ii). In this regard, JNPT had borrowed ECB amounting to USD 400 Million for road widening project comprising 6/8 laning of existing road connectivity to the port.

(iii). There is also back to back agreement with M/s (Mumbai JNPT Port Road Company Limited (MJPRCL) for repayment of loan and interest of ECB Loan to lender banks i.e. State Bank of India and DBS.

(iv). M/s MJPRCL defaulted in payment of 3rd instalment of Principal and hedging expenses amounting to ₹ 170 Crores & 4th instalment of Principal. Interest & Hedging expense amounting to ₹ 266 Crores due to insufficient funds.

(v). The approximate present toll collection of ₹ 118 Crores in FY 2019-2020 and ₹ 106 Crores in FY 2020-21 was insufficient to meet the loan repayment obligation of M/s MJPRCL towards JNPT.

(vi). In view of the above, M/s MJPRCL presented a financial model whereby the revision of toll rates to ₹ 450 per TEU with 10% increase up to Year 2025 & 5% thereafter will be sufficient to cater/ Mitigate requirement of funds for execution of balance works and repayment of loan obligations towards JNPT.

(vii). M/s MJPRCL has not proposed any increase in toll charges for the Project Cargo, liquid Cargo, LPG & Cement transported through Road.

3.2. In view of the above, the JNPT has requested TAMP to grant approval to the following revision of toll rates w.e.f 1st May 2021, as sought vide their letter dated 27th April 2021.

Description	Rate
Container	₹ 450/TEU
Projects Cargo/ Liquid Cargo by Road	₹ 22/MT
LPG/ Cement	₹ 5/MT

3.3. The JNPT has stated that, the aforesaid rates will further increase by 10% for the next two years.

3.4. The Port has also stated that it has issued a trade notice to the effect on 29 April 2021, and has initiated collection of toll as per the aforesaid revised rates from 1 May 2021.

3.5. Along with the aforesaid JNPT letter dated 25 June 2021, the JNPT has forwarded the MJPRCL letter dated 15 March 2021 duly enclosing Techno Economic Viability Report of MJPRCL, Board note to be placed before the JNPT Board on 28 June 2021, Financial Analysis Report and a Trade notice dated 30 April 2016.

3.6. The other main points as seen from the Board note forming part of the proposal is as follows:

(i). The Ministry of Road Transport and Highways (MoRTH) had directed JNPT vide Office Memorandum no. RW/NH-37011/45/2014-PPP dated 13 April 2016 to stop tolling at Toll Plazas at NH-4B and SH-54 and instead collect the toll charges at JNPT gate complex with effect from 01 May 2016 till repayment of total debt liability.

(ii). M/s. Mumbai JNPT Port Road Company Limited (MJPRCL) also instructed its toll contractors to demobilize their staff at the toll plazas with effect from 01 May 2016.

(iii). The JNPT had to compensate MJPRCL for their loss of revenue by levying appropriate charges on container and other general cargo.

(iv). TAMP vide its letter no. TAMP/28/2016-JNPT dated 29 April 2016 gave interim approval for collection of toll charges on container, project cargo, liquid cargo etc., to avoid loss of income to M/s. MPTRCL with effect from 01 May 2016.

(v). Accordingly, JNPT issued Trade Notice dated 30 April 2016 to collect following toll charges on container and other cargo passing through JNPT with effect from 01 May 2016.

Description	Rate
Container	₹ 240/- per TEU

Project Cargo/ Liquid cargo by road	₹ 20/- per MT
LPG/ Cement	₹ 5/- per MT

(vi). JNPT vide its letter no. JNP/FIN/FA/2017/1677 dated 27 April 2017 communicated to TAMP to revise the toll rates as follows:

Description	Rate
Container	₹ 267/- per TEU
Project Cargo/ Liquid cargo by road	₹ 22/- per MT
LPG/ Cement	₹ 5/- per MT

(vii). The aforesaid rates were approved by TAMP vide Order dated 15 September 2017 and were implemented with effect from 01 October 2017.

(viii). The total toll collection by M/s MJPRCL in FY 2019-20 was ₹ 118 Crores approximately (Container toll collection at ₹ 108 crores and bulk toll collection of ₹ 10 crores), which was insufficient to meet the repayment of ECB principal amount of ₹ 318 crores and interest cost of ₹ 153 crores for FY 2019-20.

(ix). Likewise, total toll collection by M/s MJPRCL in FY 2020-21 was ₹ 106 Crores approximately (Container toll collection at ₹ 97 crores and bulk toll collection of ₹ 9 crores), which was insufficient to meet the repayment of ECB principal amount of ₹ 320.37 crores and interest cost of ₹ 116.03 crores for FY 2020-21.

(x). JNPT had made back to back agreement with M/s MJPRCL for repayment of loan and interest of ECB loan to lender banks i.e. SBI and DBS.

(xi). M/s MJPRCL defaulted in the payment of the 3rd instalment of principal and hedging expenses amounting to ₹ 170 crores and 4th instalment of principal and hedging expenses amounting to ₹ 266 crores.

(xii). After various rounds of discussion with M/s MJPRCL, they had submitted a financial model considering different parameters and assumptions for revision of toll charges for meeting the current and future debt servicing for the loan taken from JNPT.

(xiii). The financial model submitted by M/s MJPRCL had following key points:

(a). Repayment of principal amount extended from 31 March 2024 to 31 March 2036.

(b). Increase in the rate of toll charges from ₹ 267/- to ₹ 450/- and increase by 10% for first three years and 5% thereafter.

(c). Project cost increases by ₹ 1369 crores as compared to original EPC of ₹ 2051 crores. The revised project cost would be ₹ 3420 crores.

(d). Average DSCR is 1.79 times during the extended loan period.

(xiv). It can be seen that the bulk toll collection is not a substantial part of total toll collection and its revision will not lead to any significant increase in toll collection amount.

(xv). M/s MJPRCL presented a financial model whereby the revision of toll rates to ₹ 450 per TEU with 10% increase up to Year 2025 & 5% thereafter and increase in the concession period upto the year 2036, will be sufficient to cater/ mitigate requirement of funds for execution of balance works and repayment of loan obligations towards JNPT.

(xvi). After discussions with officials of NHAI and JNPT, the Competent Authority has accepted the proposal of increase in toll charges of containers from ₹ 267/- to ₹ 450/-. The toll charges of other cargo would remain unchanged.

(xvii). A letter dated 27 April 2021 was sent to TAMP requesting them to provide interim approval for increase in toll charges from ₹ 267/- per container to ₹ 450/- per container with effect from 01

May 2021 with 10% increase in next two years. The toll charges for project cargo, liquid cargo transported by road and cement LPG were kept unchanged.

(xviii). Simultaneously, a trade notice dated 29 April 2021 was issued by JNPT for implementation of revised toll charges with effect from 01 May 2021.

4.1. On a preliminary examination of the aforesaid JNPT letter dated 25 June 2021 along with its enclosures, some shortcomings were observed. In this regard, JNPT was requested vide letter dated 2 July 2021 to furnish the final Board resolution approving the revision of toll Charges as well as the Cost statement for arriving at the proposed toll charges of ₹ 450/- per TEU and Minutes of the Meeting on the discussions had by JNPT with Mumbai JNPT Port Road Company Limited (MJPRCL) on various financial models so as to arrive at ₹ 450/- per TEU.

4.2. Accordingly, the JNPT vide its email dated 14 July 2021 has furnished the cost workings pertaining to the Toll charges. The relevant extract of the cost sheet is reproduced below:

Calculation of Toll Charges at JNPT				
Sr. No.	**Description**	**2021-22**	**2022-23**	**2023-24**
A.	Total Traffic of Containers, Dry Bulk, Project Cargo & Liquid in TEUs (1TEU=12MT)	47,058,975	50,470,467	52,237,792
	60%	28,235,385	30,282,280	31,342,675
	40%	18,823,590	20,188,187	20,895,117
B.	Toll Traffic on which toll to be collected (in TEUs) (A x 1.5)	**56,470,770**	60,564,560	**62,685,350**
C.	Total Toll Collection required for 2021-22 to 2023-24 (Amount in Rs.)	**2,541,184,650**	**2,997,945,720**	**3,413,217,308**
D.	Toll Rate proposed per TEU	**450.00**	**495.00**	**544.50**

4.3. Subsequently, the JNPT vide its email dated 20 July 2021 has furnished the copy of the Board Resolution approving the subject proposal.

5. In accordance with the consultative procedure prescribed, a copy each of the JNPT proposal dated 25 June 2021, email dated 14 July 2021 and 20 July 2021 were forwarded to the concerned users/ user organisations for their comments vide letter dated 16 July 2021. Some of the users have furnished their comments, which have been forwarded to the JNPT as feedback information. The JNPT has responded vide its letter dated 5 August 2021 and 16 September 2021.

6.1. Based on a preliminary scrutiny of the proposal, additional information/ clarification was sought from JNPT on few points vide letter dated 30 July 2021 and 24 September 2021. After reminders dated 13 August 2021 and 31 August 2021, the JNPT has responded vide its letters dated 16 September 2021 and 30 September 2021. The information sought and reply given by JNPT is tabulated below:

Sl. No.	**Information sought**	**Reply from JNPT**
	Vide letter dated 30 July 2021	
(i).	**General**	
(a).	As seen from the Techno Economic Viability Report (TEVR) at page no.63, it has been mentioned that for the purpose of computation of operation and maintenance cost, factors mentioned in NHAI's circular no. NHAI/11033/CGM (Fin)/ 2011 dated 29 April 2011, corrigendum to circular of even no. dated 25 November 2011 are considered. The JNPT to make available the copies of the NHAI circulars dated 29 April 2011 and 25 November 2011 for our reference.	[The JNPT has furnished the copies of the NHAI Circulars dated 29 April 2011, 2 May 2011 and 25 November 2011]
(b).	The financial performance of the Mumbai JNPT Port Road Company limited for the year 2016-17, 2017-18,	[The JNPT has furnished a copy each of the Audited

	2018-19 and 2019-20 is seen at the page no. 42 in TEVR as submitted by JNPT. The JNPT to furnish the Audited Annual Account for the years 2016-17, 2017-18, 2018-19 and 2019-20 respectively.	Annual Account for the years 2016-17, 2017-18, 2018-2019 and 2019-20.] The JNPT has stated that the annual accounts for the financial years 2019-20 is pending for approval at AGM.
(c).	The Port may be aware that the Policy for Determination of Tariff for Major Port Trust 2015, based on which the earlier proposal of fixation of toll charges for the containers and other Cargo passing through Port due to closure of Toll Gate on NH-4B,SH-54 was approved by the Authority vide its order no. TAMP/TAMP/28/2016-JNPT 15 September 2017 is replaced with the new Tariff Policy for Major Port Trusts 2018, which is applicable from 01 April 2019. In this regard, the JNPT to confirm that the proposal in reference is in accordance with the new Tariff Policy for Major Port Trusts 2018 issued by the then Ministry of Shipping and to also confirm that the proposed rates worked out by the JNPT are based on the ARR model i.e. Cost + Return on Capital Employed @ 16% basis.	Port is collecting Toll charges on direction of Ministry of Port, Shipping and Waterways and remitting the same to MJPRCL. The Financial model submitted by MJPRCL return on capital employed is not feasible at this stage. Proposal was prepared at reduce rates of ₹ 450 per TEU with 10% increase for first three year then later 5% per every year. The same was discussed in joint hearing meeting held on 5th August 2021 through Video Conference.
(ii).	**Traffic:** In the assumptions at page no. 57 of the TEVR furnished by JNPT along with the proposal, it is mentioned that the ratio has been considered at 70% TEU and 30% as FEU (1.5 times of TEU as suggested by PD) by the JNPT for calculation of Rates. However, in the statement of calculation of Toll charges at JNPT and Financial Analysis Report furnished by the JNPT vide its email 14 July 2021, the ratio of TEU and FEU is considered at 60% and 40% respectively. In this regard, the JNPT to furnish the reason for variation of TEU and FEU ratio from the TEVR and also to furnish the basis for considering TEU and FEU ratio at 60% and 40% for estimating the revenue. The JNPT to furnish the existing average TEU and FEU ratio that has passed through the JNPT toll gates.	There is typographical error on page 57 of the TEVR, It may be considered as 60% and 40% instead of 70% and 30%. JNPCT average TEU and FEU is 60.31:30.68 FY 2020-21
(iii).	**Revenue :** As seen from the statement of calculation of Toll charges at JNPT, the total traffic on which toll is to be collected is estimated at 56,470,770 TEUs, 60,564,560 TEUs and 62,685,350 TEUs for years 2021-22, 2022-23 and 2023-24 respectively and the revenue is estimated at ₹254,11,84,650/-, ₹299,79,45,720/- and ₹341,32,17,308/- for the respective years. As such, the average toll rate for the respective years works out to ₹ 45.00 per TEU, ₹49.50 per TEU and ₹ 54.45 per TEU. Whereas the average toll rate per TEU is indicated at ₹ 450.00 per TEU, ₹495.00 per TEU and ₹544.50 per TEU for the respective years. The figures in respect of tariff, revenue, operating expenditure given in the Financial Analysis Report submitted by JNPT has no clarity as to whether the values are in million/ crores/lakhs. However, in the foot note it is mentioned as denomination in million INR. Based on the TEVR report submitted by JNPT, the values of the figures are assumed to be in million	The Financial Model has been prepared in ₹. Crores and the figures of TEU were provided in Millions only. So, for the convenience only, the number of TEUs were shown in Millions. The Rate per TEU was calculated as follows:- 56,47,077 TEUs * ₹ 450 per TEU= ₹ 254,11,84,650.

	TEU/FEUs in respect of Traffic and ₹ in crores in respect of revenue, operating expenditure and other financial data. The JNPT to confirm the above positon.	
(iv).	**Operating Expenses:**	
(a).	The JNPT has considered an amount of ₹ 30.81 crores for the year 2022-23 and ₹ 41.08 crores for the years 2023-24, 2024-25 and 2025-26 towards defect liability period (DLP) expenses, which is reported to be considered as per the Contract Agreement (page no.64 of the TEVR). In this regard, the JNPT to furnish the relevant extract of the Contract Agreement and also furnish the basis of arriving at the DLP expenses for the respective years.	Some of the expenses are not considered during the DLP period as the Contractor is responsible for the Operation & Maintenance and the amount is being paid to the Contractor as per Article 14.1.1 Clause, which is reproduced below **"***The contractor shall maintain the project highway for a period of 4(four) years commencing from the date of the provisional certificate (The Maintenance Period). For the performance of maintenance obligations, the contractor shall be paid a total amount equal to 1.5% of the contract price for the first year of maintenance , and 2% of the contract for the second, third and fourth year of maintenance inclusive of all taxes.***"** Accordingly (DLP) expenses submitted is in line with Techno Economic Viability Report submitted by JNPT.
(b).	An assumption is made in the TEVR at page no. 64 that the annual cost for operation of toll plaza is ₹1.60 crores per toll per annum in the year 2010-11 with an escalation of 5% per annum. However, the JNPT in its Financial Analysis Report has considered Toll Plaza & O&M Expenses for the years from 2020-21 to 2020-26 at 3% of the operating income. For the years from the year 2026-27 onwards, the Toll Plaza & O&M Expenses is seen to be considered as per the assumption made in TEVR. The JNPT to furnish the reason for deviation for estimating the expenditure in the regard as against the assumption made in TEVR.	NHAI has issued circulars for assuming expenses on approximate basis and are not recommendatory in nature, the actual expense may vary as per the actual scenarios. Here in case of MJPRCL, Toll is not being collected from 4 toll plazas and accordingly the actual expense may not be the same as in other working Toll Plazas. So instead of going with assumptions given in Circulars, we have modified some of the Expenses based on actual scenarios. Also, if desired the expense may be increased, but it will only have an impact on the per TEU rate, which will be increased due to increase in expense, which will give false picture and will unnecessarily increase the burden in terms of per TEU charges.
(c).	The JNPT has considered a figure of ₹1.08 crores	NHAI has issued circulars for

<table>
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<td>towards Electricity and Petrolling Expenses for the year 2026-27 in the Financial Analysis Report. Thereafter, the said figure has been escalated at 5% p.a. However, the figure for the Electricity and Petrolling Expenses works out to be ₹ 2.29 crores as per the following calculation.
<table>
<tr><th>Sl.No.</th><th></th><th>4 lane</th><th>6 lane</th><th>8 lane</th></tr>
<tr><td>a.</td><td>Length of Road (in K.M. s)</td><td>3.145</td><td>20.950</td><td>22.962</td></tr>
<tr><td>b.</td><td>Electricity and Patrolling cost for the year 2010-11 (₹ in crores per K.M.)
(As per Assumption made in TEVR)</td><td>0.013</td><td>0.013</td><td>0.013</td></tr>
<tr><td>c.</td><td>Multiplication Factor in Expenses
(As per Assumption made in Financial Analysis Report)</td><td>100%</td><td>150%</td><td>200%</td></tr>
<tr><td>d.</td><td>Electricity and Patrolling Expenses
(₹ in crores per K.M.)
(d) = (a) x (b) x (c).</td><td>0.04</td><td>0.41</td><td>0.60</td></tr>
<tr><td>e.</td><td>Total Electricity and Petrolling Expenses for the year 2010-11</td><td colspan="3">₹1.05 crores</td></tr>
<tr><td>f.</td><td>Total Electricity and Patrolling Expenses for the year 2026-27 at an escalation of 5% p.a. i.e. from 2010-11 to 2026-17
(As per Assumption made in TEVR)</td><td colspan="3">₹ 2.29 crores
[1.05 x $(1.05)^{16}$]</td></tr>
<tr><td>g.</td><td>Total Electricity and Patrolling Expenses for the year 2026-27 considered by JNPT in the Financial Analyses Report</td><td colspan="3">₹ 1.08 crores.</td></tr>
<tr><td>h.</td><td>Variation</td><td colspan="3">₹1.21 crores</td></tr>
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Therefore, the JNPT to review and rectify the figures relating to electricity and petrolling Expenses for the year 2026-27. The JNPT to clarify the reasons for not estimating the expenditure on account of electric and patrolling for the years 2021-22 to 2025-26.</td>
<td>assuming expenses on approximate and are not recommendatory in nature, the actual expense may vary as per the actual scenarios. Here in case of MJPRCL, Toll is not being collected from 4 Toll Plazas and accordingly the actual expenses may not be the same as in other working Toll Plazas. So instead of going with the assumptions given in Circulars, we have modified some of the Expenses based on actual scenarios. Also, if desired the expense may be increased, but it will only have an impact on the per TEU rate, which will be increased due to increase in expense, which will give false picture and will unnecessarily increase the burden in terms of per TEU charges</td>
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<tr>
<td>(d).</td>
<td>As per the assumption made in the TEVR at page no. 64, the other office expenses including corporate office</td>
<td>NHAI has issued circulars for assuming expenses on</td>
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	expenses is reckoned at ₹ 2.50 p.a for the financial year 2010-11 with an escalation of 5% per annum. However, the JNPT in its Financial Analysis Report has considered an amount of ₹1.00 crores for the financial year 2020-21 and thereafter a flat increase of ₹0.05 crore per annum has been considered over the previous year. In this regard, the JNPT to furnish the reason for deviation in estimating the expenditure as against the assumption made in TEVR.	approximate and are not recommendatory in nature, the actual expense may vary as per the actual scenarios. Here in case of MJPRCL, Toll is not being collected from 4 Toll Plazas and accordingly the actual expenses may not be the same as in other working Toll Plazas. So instead of going with the assumptions given in Circulars, we have modified some of the Expenses based on actual scenarios. Also, if desired the expense may be increased, but it will only have an impact on the per TEU rate, which will be increased due to increase in expense, which will give false picture and will unnecessarily increase the burden in terms of per TEU charges
(e).	The JNPT has estimated insurance expenses at ₹5.13 p.a. from the years 2026-27 onwards. In this regard, JNPT to furnish the basis for arriving at an amount of ₹5.13 p.a. towards insurance expenses and also the reason for not considering such expenditure for the years 2021-22 to 2025-26.	As per circular, the insurance is 0.15% of the total Project cost and same has been considered.
(f).	The basis for considering the administrative Expenses at 2% of the revenue for the years 2021-22 onwards to also be furnished.	The cost is to administer the revenue as per the industry Practice.
	Vide letter dated 24 September 2021	
(i)	Separate Traffic figures for the containers, cement, other cargo and liquid cargo have not been indicated in the Cost statement attached herewith. Only the consolidated traffic figure has been indicated. The breakup of traffic may be furnished.	Cost Statement indicating separate traffic is furnished.
(ii).	The consolidated traffic is seen to have been multiplied by the factor of 1.5 so as to arrive at the Traffic on which toll is to be collected in TEUs. The reasoning behind applying the factor of 1.5 to the consolidated traffic figure may be furnished.	Multiplied by factor 1.5 is based on clause 9.5 of Working Guidelines to operationalize the Policy for Determination of Tariff for Major Port Trusts, 2015 for 40''TEU
(iii).	The basis for considering the amount of toll collection required at ₹ 254.12 crores, ₹ 299.79 crores and ₹ 341.32 crores for the years 2021-22, 2022-23 and 2023-24 to be furnished.	No response furnished by JNPT.
(iv).	Considering the toll collection required at ₹ 254.12 crores, ₹ 299.79 crores and ₹ 341.32 crores for the years 2021-22, 2022-23 and 2023-24 and the consolidated traffic at 56,470,770 TEUs, 60,564,560 TEUs and 62,685,350 TEUs for the corresponding years, the toll rate per TEU works out to ₹ 45 per TEU and not ₹ 450/- per TEU, as proposed by the JNPT. The figures to be re-checked and the correct full-fledged workings to be furnished.	Please refer the Cost statement furnished.

6.2. The revised Cost statement as furnished by JNPT under cover of its letter dated 30 September 2021 is given below:

Description	2021-22	2022-23	2023-24
Containerized cargo (in TEUs) Less: ICD traffic @ 16.63%_for the year 2021-22, 15% for 2022-23 and 16% for 2023-24	4000000	4304000	4432000
Dry Bulk (Cement) & Others (in MTs)	5870770	6016560	6201350
Liquid Cargo (Being transported by Road) (in MT)	2600000	2900000	3300000
Total of B + C (in MT)	8470770	8916560	9501350
Total Dry Bulk, Project Cargo & liquid in TEUs (1 TEU = 12 MT)	705898	743047	791779
Total container Traffic	4705898	5047047	5223779
60%	2823539	3028228	3134268
40%	1882359	2018819	2089512
Total container Traffic on which toll to be collected (in TEUs)	5647077	6056456	6268535
Total Toll collection amount considered by MJPRCL (Amt in Rs.)	2541184650	2997945720	3413217308
Toll rate proposed per TEU	**450.00**	**495.00**	**544.50**

7. In view of the outbreak of COVID – 19 and in pursuance of the Ministry of Shipping (MOS) letter No. 11053/30/2020-Coord. dated 16 April 2020 to hold virtual meetings, a joint hearing on the case in reference was held on 05 August 2021 through Video Conferencing. At the joint hearing, the JNPT, NHAI and the users/ user organisations have made their submissions.

8.1. During the joint hearing, the CSLA has raised an issue relating to the mode of collection of toll charges. They were of the view that the JNPT should collect the toll charges directly from the trade and that the Shipping Lines should be kept outside the purview of levy of toll charges. As such, the JNPT was requested to look into those aspect.

8.2. In this regard, the JNPT vide its letter dated 05 August 2021 has conveyed that considering the interest of the general public and in order to decongest the port traffic, it was decided to discontinue the existing toll plazas from the road of NH-4B and SH-54 which was operated by MJPRCL and was decided to collect toll fee by JNPT on behalf of MPJRCL. The JNPT has also added that as a matter of fact, Shipping Lines are only registered with JNPT and not the trade. Hence, it would not be possible to collect the Toll charges from the trade directly.

9. Further, after the joint hearing, the Maritime Association of Nationwide Shipping Agencies-India (MANSA) vide its email dated 12 August 2021 has furnished its additional comments, which have been forwarded to the JNPT as feedback information. The JNPT has responded vide its letter dated 16 September 2021.

10. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received and arguments made in the joint hearing by the concerned parties will be sent separately to the relevant parties. These details will also be made available at our website http://tariffauthority.gov.in.

11. With reference to totality of information collected during the processing of this case, the following position emerges:

(i). In view of heavy traffic congestion at roads of NH-4B and SH-54 reportedly arising on account of long queues at the toll gates put up by the Special Purpose Vehicle (SPV) i.e. Mumbai JNPT Port Road Company Limited (MJPRCL), the Government, in keeping up with its policy of Ease of doing business had decided to close the said toll gates with effect from 1 May 2016. Since the main user of these roads was the traffic bound for Jawaharlal Nehru Port Trust (JNPT), it was then decided that the toll/ user fee be collected by the JNPT at its gate complexes, from the port goods traffic which use the road connectivity. Accordingly, based on a proposal filed by the JNPT, this Authority vide its Order no TAMP/28/2016-JNPT dated 15 September 2017 had approved levy of toll charges of ₹ 267/- per TEU on Containers, ₹ 22/- per MT on Project Cargo & Liquid Cargo and ₹ 5/- per MT on Cement & LPG, to compensate the SPV for the losses suffered on account of closure of Toll Gates. Vide the said Order, the validity of the said toll rates was prescribed till 31 March 2019. Thereafter, when the general revision of SOR of JNPT was approved vide Order no. TAMP/52/2019-JNPT dated 01 June 2020, the toll charges formed part of the general SOR of JNPT.

In the proceedings relating to the fixation of toll charges in September 2017, JNPT had indicated that the toll charges being recovered is on account of improvement and maintenance of road. Further, it had also indicated that it had raised funds to the tune of 400 Million Dollars through External Commercial Borrowings (ECB) for MJPRCL for execution of 6/ 8 laning of NH-4B and SH-54 and that once the 6/ 8 laning of SH-54 and NH 4B is completed, it will rework the rates so as to capture the costs incurred on expansion, debt servicing obligation and other costs associated with it and that JNPT shall discontinue collection of toll/ user fees, once the total debt liability is repaid.

In this backdrop, the JNPT in its subject proposal has stated that the toll collected by the Port is transferred to M/s. MJPRCL which is used by them to service the ECB loan, lent by the port to them. However, owing to the insufficiency of the present toll collection, M/s. MJPRCL has been unable to service its debt obligation since September 2020. In view of the above, the port has come up with a proposal for revision of the toll charges to enable M/s. MJPRCL to service its debt obligations towards the port. The proposal of the port has the approval of its Board of Trustees.

(ii). The JNPT has submitted its proposal in June 2021. The said proposal of JNPT alongwith the information/ clarification furnished by the port during the processing of the case in reference has been considered in the analysis.

(iii). Prior to the submission of the proposal in June 2021, the JNPT in April 2021 had intimated that it intended to levy the revised Toll charges from 1st May 2021 and that a detailed proposal alongwith necessary Board approval and minutes of the meeting with relevant stakeholders will be filed shortly. From the proceedings relating to the subject proposal, it is understood that based on a trade notice issued on 29 April 2021, the port has initiated collection of toll as per the revised rates from 1 May 2021.

The Maritime Association of Nationwide Shipping Agencies-India (MANSA) has strongly objected to the levy of the proposed rate by JNPT from 01 May 2021 on the ground that the JNPT ought to have levied the revised toll rates only after receiving the approval from this Authority. As such, the MANSA is of the view that JNPT should withdraw levy of the revised toll charges and also refund whatever has been collected by JNPT from 01 May 2021.

In this connection, reference is drawn to Clauses 5.7.1, 5.7.3 and 5.7.4 of the Working Guidelines issued to operationalise the Tariff Policy, 2018, which enables the port to file the proposal and to simultaneously levy the proposed rate on an ad hoc basis, till the rate is finally notified. The proposal of JNPT is seen to be based on the stipulations contained in the Working Guidelines issued to operationalise the Tariff Policy, 2018.

(iv). Taking into account the Total Toll collection amount considered by MJPRCL and the traffic of the cargo items during the years 2021-22, 2022-23 and 2023-24, the JNPT has arrived at the toll charges, which it intends to levy during the years 2021-22 to 2023-24. Each of the components are discussed in the paragraphs hereinunder:

(a). The JNPT has projected a traffic of 4 million TEUs, 4.3 million TEUs and 4.43 million TEUs to be handled during the years 2021-22, 2022-23 and 2023-24 respectively at

JNPT. The traffic as projected by JNPT for the years 2021-22 to 2023-24 is seen to be as per the Financial Analysis Report of MJPRCL.

(b). The average share of ICD traffic at 16.63% for the year 2021-22, 15% for the year 2022-23 and 16% for the year 2023-24 has been reported to have been excluded from the container traffic as discussed above, presumably on the ground that the ICD traffic would move by rail and not pass the toll gates. Incidentally, even during the last review of toll rates in September 2017, the share of ICD traffic had been considered by JNPT at 15% for the year 2017-18 and 16% for the year 2018-19.

(c). The judgment of the port with regard to the quantum of liquid cargo traffic, Cement and Other Cargo moved by Road for the years 2021-22 to 2023-24, is relied upon.

(d). By considering a conversion factor of 1 TEU = 12 MTs, the JNPT is seen to have converted the liquid, cement and other cargo into TEUs. The unit of measurement of liquid cargo is in terms of tonnage. Thereafter, based on the ratio of 20’ and 40’ containers and by applying a conversion factor of 1.5 to convert the 40’ containers to TEUs, the total traffic in TEUs on which toll is to be collected has been worked out by JNPT at 5647077 TEUs, 6056456 TEUs and 6268535 TEUs for the years 2021-22 to 2023-24 respectively. The same is seen to be as per the Financial Analysis Report of MJPRCL.

(e). The tentative total Toll collection amount as communicated by MJPRCL to JNPT is seen to be ₹ 254.12 crores, ₹ 299.79 crores and ₹ 341.32 crores for the years 2021-22, 2022-23 and 2023-24 respectively. This is seen to be as per the Financial Analysis Report of MJPRCL.

(vi). Based on the tentative total Toll collection amount and the total traffic in TEUs on which toll is to be collected for each of the years under consideration as discussed above, the toll rate has been worked out by JNPT at ₹ 450/- per TEU, ₹ 495/- per TEU and ₹ 544.50 per TEU for the years 2021-22, 2022-23 and 2023-24 respectively. The JNPT has proposed to revise only the toll rates pertaining to the Containers. The existing toll rates in respect of Project Cargo and Liquid Cargo handled by road at ₹ 22/- per MT and in respect of Cement/ LPG at ₹ 5/- per MT, is proposed to be maintained at the existing level by the JNPT without any change.

(vii). It is noteworthy that the initial proposal of levy of toll charges by JNPT in the year 2016 had emanated in view of Government’s policy of Ease of doing business and for decongesting the roads leading to the JNPT. Now, the proposal of the port to review the toll rates of containers is to enable M/s. MJPRCL to service its debt obligations towards the port. In view of the above and based on the workings in support of the proposed toll rates as discussed in the preceding paragraphs, this Authority is inclined to grant approval for the levy of toll charges as proposed by the Port in its proposal, for the years 2021-22 to 2023-24.

(viii). As brought out earlier, based on the stipulations contained in Clauses 5.7.1, 5.7.3 and 5.7.4 of the Working Guidelines issued to operationalise the Tariff Policy, 2018, the JNPT has started levying the proposed rates on an adhoc basis with effect from 01 May 2021. As such, the toll rates approved now, is deemed to have come into effect from 01 May 2021.

(ix). The Tariff Policy, 2018, read with the Working Guidelines issued to operationalize the Tariff Policy, stipulates prescription of Performance Standards. In this connection, it is recalled that during the proceedings relating to the fixation of toll charges in September 2017, the JNPT had then stated that since the levy is on account of abolition of Toll at Toll Gates, no performance standard is connected with the same which can be made applicable.

12.1. In the result, and for the reasons give above, and based on a collective application of mind, this Authority approves replacement of the existing toll charges in the existing Scale of Rates of JNPT with the following:

“6.7: Toll charges/ User fees:

Port will collect the following charges on container (TEU) and other general cargoes going in and out of all Gate complexes (at JNPT, NSICTPL, GTIPL, NSIGTPL, BPCL & BMCTPL) from Shipping Lines/ Agents/ Tank Farm operators (delivered by road)/ Consignee etc.)

Sr. No.	Particulars	Toll charges in ₹
1.	Container (per TEU)	450/- per TEU
2.	Project Cargo & Liquid Cargo handled by road	22/- per MT
3.	Cement / LPG	5/- per MT

(Note: The toll rate as given at sl.no. 1 above will be increased by 10% per annum during the years 2022-23 and 2023-24 i.e. ₹ 495 per TEU and ₹ 544.50 per TEU respectively.)

"

12.2. Since the levy of revised toll at the Gates of JNPT is already in vogue since 01 May 2021, the revised toll charges is deemed to have come into effect from 01 May 2021 and shall remain co-terminus with the validity of the rates as approved in the general revision Scale of Rates of JNPT. The approval accorded shall automatically lapse thereafter unless specifically extended by this Authority.

(T.S. Balasubramanian)
Member (Finance)

SUMMARY OF THE COMMENTS RECEIVED FROM THE USERS/ USER ORGANISATIONS AND THE ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY.

F.No. TAMP/28/2021 - JNPT	**:**	**Proposal received from Jawaharlal Nehru Port Trust for revision of toll charges for containers passing through Port due to closure of Toll Gate on NH-4B, SH-54 for the years 2021-22, 2022-23 and 2023-24.**

The summary of comments received from the Users/ user associations and the reply of JNPT thereon is tabulated below:

Sl. No.	Comments of the users / user organisations	Response of JNPT
1.	**Container Shipping Lines Association (CSLA)**	
(i)	It was at the behest of the then Minister for Shipping, Mr. Nitin Gadkari & the then Chairman, JNPT, that the shipping lines had agreed to collect the toll charges from the trade, on behalf of JNPT and pass them on thereafter to the port. As a result of this, the toll charges formed a part of the lines' THC and the lines in turn came under pressure from the trade for the high THC collected. That being the case & in view of these charges being brought into effect retrospectively from the 1st of May 2021, CSLA regrets the inability of our member lines to collect them on behalf of JNPT any longer. CSLA therefore leaves it to JNPT to collect them from the trade directly. The lines on their part, will reduce their THC to that effect.	Considering the interest of general public & in order to decongest the port traffic, JNPT decided to discontinue the existing toll plazas from the road of NH-4B and SH-54 which was operated by MJPRCL and was decided to collect toll fee by JNPT on behalf of MJPRCL. As a matter of fact, Shipping lines are only registered with JNPT and not the trade. Hence, it would not be possible to collect toll charges from trade directly. JNPT will consider the proposal submitted by CSLA in due course and will inform the trade through Trade Notice.
2.	**Maritime Association of Nationwide Shipping Agencies-India (MANSA)**	
(i)	First and foremost, in line with the agreed norms, any and all tariff revisions have to be examined/ considered by TAMP on receipt of a proposal from Terminals, discussed with trade and agreed upon and only thereafter and with approval after due Gazette notification by TAMP one month in advance, the proposed change should be implemented.	It is to state that clause 5.7.3 of working guideline to operationalise the tariff policy of major port Trust, 2018, empowers the port to levy proposed rate on adhoc basis till the rate is finally notified. Accordingly, Port has submitted the proposal to TAMP.
(ii)	But contrary to the norm, JNPT has charged the revised tariff first and thereafter endeavoured to regularise/ introduce the change with retrospective or prior to compliance of the set procedure. JNPT has arbitrarily revised / escalated the charges without TAMP's approval which simply cannot be acceptable. It is to be noted that no terminal should be declaring any suo moto revision on their own without consulting TAMP and trade.	
(iii)	Whilst it is noted at this stage that TAMP has invited our comments, MANSA do humbly submit firstly that JNPT may kindly be asked to withdraw levy of this changed	

	tariff with effect from May 2021 and also refund whatever has been forcibly collected in the Interim period.	
(iv)	Then, TAMP may convene a joint discussion and decide on the quantum of revision and then formalise the same vide a gazette notification.	
(v)	Secondly, considering the current difficult situation faced by trade, MANSA factually looks forward to waiver of toll charges, especially on Empty containers. It may be noted that any additional charges on Empties is a burden on Line which are irrecoverable.	Contention of MANSA for waiver toll charges on empty containers is not acceptable to JNPT. Waiver of toll charges on empty container will lead to increase in Toll charges for loaded container and will have adverse effect on trade.
(vi)	While from one end Govt. is looking and trying to reduce the Logistics Cost, but simultaneously hiking of the charges defeats this purpose since such hikes would definitely be passed on and become a setback to Indian highly competitive International EXIM Trade.	[JNPT has not replied specifically to this point.]
(vii)	Further it is necessary to protect economical movements to ensure providing and meeting requirements of empties to the Export trade and any levy of toll charges on empty container would become an impediment to economy in handling costs. Complete exemption for toll charges on empty container is needed unlike rail movement. (partial Tax concession of 5% on empty and 12% on laden container was given). Since understandably the internal empty container movement does not generate any revenue to shipping trade resulting only increase in toll charges adding-on logistics & container management cost at NSA port.	[JNPT has not replied specifically to this point.]
(viii)	As all are aware now, the availability and imbalance of Containers is a Global challenge. The lines are repositioning empty containers from all over the world and trying to make equipment availability to the best possible extent for Exporters. If, at this stage TAMP passes any increase in the TOLL charges, the same would reflect through an increased THC levels. Then Lines would be reluctant to bring in empties to Indian shores since there is no way they could absorb these costs. However as mentioned, any additional charges on Empties is a burden on Line which are irrecoverable. The shipping lines are as such incurring additional costs & repositioning empty containers into the country to meet the export requirements. Thus any further increase in the TOLL charges would jeopardize Lines efforts to make the Containers available to the Trade and also goes against Govt. efforts to reduce the Logistics Cost. In view of the same MANSA would urge that the TOLL charges on Empties should be waived off.	[JNPT has not replied specifically to this point.]
3.	**Indian National shipowners Association (INSA)**	
	We have no comments to offer.	

2. In view of the outbreak of COVID – 19 and in pursuance of the Ministry of Shipping (MOS) letter No. 11053/30/2020-Coord. dated 16 April 2020 to hold virtual meetings, a joint hearing on the case in reference was held on 05 August 2021 through Video Conferencing. A summary of the

arguments made by the JNPT, NHAI and the users/ user organisations during the joint hearing is given below:

NHAI

(i). The existing 4 lane road has been extended to 6 lanes in some stretches and 8 lane in some stretches, at a cost of ₹ 3420 crores.

(ii). The initial cost of the project was ₹ 2051 crores. However, due to the changes suggested by the CIDCO, JNPT and Railways and also due to the increased acquisition cost of the land, the cost of the Project has gone up to ₹ 3420 crores.

(iii). The existing toll charges of ₹ 267/- per TEU has been fixed in the year 2017 and not enhanced thereafter. This toll rate is not sufficient to meet the increased project cost as well as to service the ECB loan.

(iv). After undertaking various consultations, it was decided to revise the Toll rate to ₹ 750/- per TEU. This rate is closer to the Toll rate as applicable for the Multi Axle Vehicles, as per the NHAI Rules.

(v). However, based on the discussions with JNPT, it has been decided to propose a toll rate of ₹ 450/- per TEU.

[Member (F), TAMP: Is the toll rate of ₹ 450/- per TEU sufficient to recover cost plus interest?]

(vi). Initially, the Concession period was upto the year 2032. As such, it was necessary to have a toll rate of ₹ 750/- per TEU. However, the concession period has now been extended upto the year 2036. Thus, ₹ 450/- per TEU with an annual increase of 10% in the first 3 years and an annual 5% increase thereafter, would be viable.

MANSA

(i). Generally, any tariff revision has to be examined/ considered by TAMP on receipt of a proposal from Terminals, discussed with trade and agreed upon and only thereafter, the proposed change should be implemented. But contrarily, JNPT has started charging the rates from 1 May 2021 and then thereafter, it has submitted a proposal to TAMP. Hence, JNPT may kindly be asked to withdraw levy of this revised toll charges with effect from May 2021 and also refund whatever has been collected in the interim period.

(ii). Given that when the Government is stressing on reducing the Logistics cost, the increased toll charges will lead to additional burden on the shipping lines.

(iii). We also urge that the toll charges be waived on Empty containers, given that the empty container movement does not generate any revenue

CSLA

(i). Earlier, the shipping lines had agreed to collect the toll charges from the trade, on behalf of JNPT and pass them on thereafter to the port. As a result, the toll charges have formed part of the lines' Terminal Handling Charges (THC), thereby increasing the THC. CSLA, therefore, expresses its inability to collect the toll charges on behalf of JNPT any longer. The Lines are no way concerned with the collection of toll charges. The JNPT may collect them from the trade directly.

JNPT

(i). It may be noted that Shipping Lines are registered with JNPT and not the end customers. Hence, the existing practice of the Shipping Lines collecting the toll charges and remitting the same to JNPT, may have to continue.

[CSLA: The DPD customers are registered with JNPT. The JNPT system can be suitably modified to enable collection of toll charges by JNPT directly from the customers. We request JNPT to look into this aspect and keep the Shipping Lines outside the purview of levy of toll charges.]

(ii). Keeping the trade interest in mind, the toll charges have been restricted to ₹ 450/- per TEU. The proposed rate is reasonable, given the benefits of reduced travel time for the vehicles. The income generated from the levy of toll charges is not part of the JNPT revenue.

[Member (F), TAMP: The mandate of TAMP is to approve the charges for the various services. As such, TAMP will look into the toll charges proposed by JNPT and the matter relating to its retrospective application. As regards the other issues relating to the mode of collection of toll charges, the JNPT is requested to look into those aspects.]

3. Further, after the joint hearing, the Maritime Association of Nationwide Shipping Agencies-India (MANSA) has furnished its additional comments, which have been forwarded to the JNPT as feedback information. The additional comments of MANSA and the reply of JNPT thereon is tabulated below:

<table>
<tr><th>Sl. No.</th><th>Additional Comments of MANSA</th><th>Response of JNPT</th></tr>
<tr><td>(i)</td><td>The revision in the TOLL charges implemented by JNPT with retrospective effect from May 2021, without approval from TAMP is arbitrary and not in line with correct procedure or practice. Any charge to be levied by JNPT cannot be on retrospective effect, and also it must be with prior consent/approval of TAMP.
Hence our submission, as stressed during discussions in the meeting, is for JNPT to immediately withdraw the Trade Notice implementing the revision in TOLL charges, till the revision is approved by TAMP and announced, and to refund the charges already collected till now.</td><td rowspan="4">It is to state that clause 5.7.3 of working guideline to operationalise the tariff policy of major port Trust, 2018 empower the port to levy proposed rate on adhoc basis till the rate is finally notified.
Accordingly, Port has submitted proposal to TAMP.</td></tr>
<tr><td>(ii).</td><td>Also, a relook at the revision proposed reveals the TOLL charges to be steep and exorbitant, and with 10% increase annually up to 2025, and 5% thereafter, will definitely lead to putting onerous additional financial burden on the EXIM trade which would be contrary to the known Government initiatives to reduce Logistical costs to Indian Importers and Exporters. TAMP is requested to kindly consider this fact as well, while deciding on the revision of TOLL charges.</td></tr>
<tr><td>(iii).</td><td>It was also highlighted that in case JNPT finds that the present TOLL charge is very inadequate and doesn’t suffice to meet the expenses of Road widening projects etc., let the previous system be re-introduced whereby TOLL charges were collected from all the Vehicles, that will certainly reduce the additional burden on Shipping Lines and Trade. The possibility may be examined.</td></tr>
<tr><td>(iv).</td><td>MANSA humbly suggests TAMP to kindly consider the valid points made during discussions in the meeting and to pass on necessary instructions to JNPT to not raise any further invoice with the revised charges till the matter is resolved and finally approved by TAMP. Also JNPT may be directed to refund the amounts already collected towards these charges with retrospective effect, without obtaining TAMP’s approval.</td></tr>
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